

Agreement between the Government of the People's Republic of China and the Government of the Republic of Kazakhstan on the Encouragement and Mutual Protection of Investments

The Government of the People's Republic of China and the Government of the Republic of Kazakhstan (hereinafter referred to as "the Contracting Parties").

Wishing to encourage and protect investors from one Contracting Party to invest in the territory of the other Contracting Party and to create favourable conditions for the development of economic cooperation between the two countries, in accordance with the principles of mutual respect for sovereignty, equality and mutual benefit.

Have agreed as follows:

Article 1.

In this Agreement.

1. The term "investment" means assets of every kind invested in the territory of the receiving Contracting Party in accordance with its laws and regulations, in particular.

(i) Ownership of movable and immovable property and any property rights relating thereto.

(ii) Shares or other forms of participation in enterprises and companies.

(iii) The right to claim money or to claim an act of economic value.

(iv) Intellectual property rights, including: copyrights, industrial property rights, trademarks, company names, appellations of origin, trade secrets, and proprietary technology and processes.

(v) The right to engage in economic activities, in particular the exploration and exploitation of natural resources, as granted by law or contract.

2. The term "investor" means, with respect to any of the Contracting Parties.

(i) Natural persons who are citizens of a High Contracting Party permanently residing in its territory in accordance with its laws and regulations.

(ii) Enterprises and companies established in accordance with the laws and regulations in force in the territory of one of the Contracting Parties.

Provided that a natural person, enterprise or corporation shall have the right to invest in the territory of one of the Contracting Parties in accordance with the laws and regulations of the other Contracting Party.

3. The term "investment-related activities" includes the establishment, functioning and maintenance of a company, enterprise or other organization for the purpose of carrying on business activities; the conclusion and execution of contracts, the acquisition, use and disposition of property of all kinds, including intellectual property rights; and the purchase, issue and sale of shares and other securities.

4. The term "return" shall mean the sums of money arising from investments or activities connected therewith, including profits, dividends, interest, capital gains, royalties, technology royalties, management fees and other remuneration.

5. The term "Territory" shall mean.

(i) The territory of the People's Republic of China and the territory of the Republic of Kazakhstan.

(ii) The outer waters of the territorial sea of the above-mentioned territories over which a Contracting Party exercises sovereign rights or jurisdiction and explores, exploits, extracts and protects its natural resources in accordance with international law.

Article 2.

1. A Contracting Party shall encourage investors of the other Contracting Party to invest in its territory and shall permit such investments in accordance with its laws and regulations.

A Contracting Party shall, in accordance with its laws and regulations, provide assistance in obtaining visas and work permits for citizens of the other Contracting Party who are engaged in investment-related activities in its territory.

Article 3.

1. A Contracting Party shall guarantee, in its territory, equitable treatment and protection of the investments and investment-related activities of investors of the other Contracting Party.

2. The treatment referred to in paragraph 1 of this Article shall be no less favourable than that accorded to investments and investment-related activities of investors of any third State.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to privileges and immunities accorded or to be accorded by a Contracting Party to any investor or investment of a third State on the basis of:

(i) Participation in free trade areas, customs or economic unions, mutual economic assistance organizations or international agreements by which a contracting party grants similar advantages and privileges to participants in such organizations.

(ii) International agreements on taxation and other tax treaties.

(iii) Agreement on border issues.

Article 4.

1. Investments made by an investor of one Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to other measures having similar effects to nationalization or expropriation (hereinafter referred to as "expropriation"), except where such measures are necessary in the public interest and in accordance with the procedure established by law and on a non-discriminatory basis.

2. The compensation provided for in paragraph 1 of this Article shall be calculated on the basis of the actual value of the investment on the day preceding the adoption or announcement of the decision on expropriation.

The payment of compensation shall be without undue delay and shall be convertible and freely remitted from the territory of one Contracting Party to the territory of the other Contracting Party.

3. If an investor of a Contracting Party whose investment is made in the territory of the other Contracting Party suffers losses as a result of war, a state of emergency, internal disturbances and other similar circumstances, and if the Contracting Party in whose territory the investment is made takes measures to compensate for such losses or other related measures, it shall accord such investor no less favourable treatment than that accorded to any investor of a third State.

Article 5.

A Contracting Party shall, in accordance with its laws and regulations, ensure that the investor of the other Contracting Party remits the sums related to the investment after meeting all tax obligations, including.

(i) "Proceeds" as defined in paragraph 3 of article 1 of this Agreement.

(ii) All or part of the liquidation of the investment.

(iii) Disbursement of investment-related loan agreements.

(iv) Technical assistance, technical services and payment of management fees.

(v) Wages and other emoluments received by the citizens of the other contracting party for investment-related work and services performed in the territory of the former contracting party and in the amounts determined by laws and regulations.

Article 6.

The remittances referred to in Articles 4 and 5 of this Agreement shall be made in accordance with the official exchange rate of the Contracting Party in whose territory the investment is made on the date of the remittance.

Article 7.

This Agreement shall apply to all investments made after January 1, 1985.

Article 8.

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through diplomatic channels.

2. If the dispute cannot be settled by such means within six months from the date of the submission of the dispute by one of the Parties, the dispute shall, at the request of one of the Parties, be submitted to an ad hoc arbitral tribunal.

3. The arbitral tribunal shall be composed of three arbitrators, to be established in the following manner: Within two months from the date on which one of the Contracting Parties receives written notification from the other Contracting Party that the dispute has been submitted to arbitration, the first Contracting Party shall appoint one arbitrator each. Within two months from the date of the appointment of the second arbitrator, the two arbitrators shall choose as the third arbitrator a national of a third country with whom both Contracting Parties have diplomatic relations and who shall, with the agreement of the Contracting Parties, serve as the presiding arbitrator.

4. If the arbitral tribunal has not been constituted within four months of receipt of the written notice of referral of the dispute to the arbitral tribunal, either Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointment. If the President of the International Court of Justice is a national of a Contracting Party or is otherwise unable to perform the above-mentioned functions, the senior judge of the International Court of Justice who is not a national of a Contracting Party shall be requested to make the necessary appointment.

5. The arbitral tribunal shall establish its own rules of procedure. It shall base its decisions on the provisions of this Agreement and on the generally recognized principles and norms of international law.

6. The decisions of the arbitral tribunal shall be made by a majority vote. The awards shall be final and binding on the Contracting Parties. At the request of any of the Contracting Parties, the arbitral tribunal shall state the reasons for its decision.

7. A Contracting Party shall bear the expenses relating to the activities of the arbitrators appointed by it and the expenses of its representatives to the arbitral tribunal. The expenses relating to the activities of the presiding arbitrator and other costs shall be borne equally by the Contracting Parties.

Article 9.

1. Any dispute between a Contracting Party and an investor of the other Contracting Party concerning the amount of compensation for expropriation may be submitted to an arbitral tribunal.

2. The arbitral tribunal shall be established on a case-by-case basis in the following manner: each of the Parties to the dispute shall appoint one arbitrator, who shall choose as his or her presiding arbitrator a national of a third State having diplomatic relations with each of the Parties. The first two arbitrators shall be appointed within two months of the date on which the dispute is notified in writing that the dispute has been submitted to arbitration, and the presiding arbitrator shall be chosen within four months. If the arbitral tribunal has not been constituted within the time limit set, either party to the dispute may request the President of the Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.

3. The Arbitral Tribunal shall establish its own rules of procedure, in which case it may refer to the rules of the SCC in establishing the procedure.

4. The award of the Arbitral Tribunal shall be made by majority vote. The award shall be final and binding on the disputing parties. Each Contracting Party shall be obliged to enforce the award of the Arbitral Tribunal in accordance with its respective laws.

5. The arbitral tribunal shall render its decisions in accordance with the provisions of this Agreement, the laws and regulations, including their conflicting norms, of the Contracting Party in whose territory the investment is made, and the generally recognized principles and norms of international law.

6. Each Party to the dispute shall bear the expenses relating to the activities of the arbitrators appointed by it and the expenses of its representative to the arbitral proceedings, and the expenses relating to the activities of the presiding arbitrator and other expenses shall be borne equally by the Parties to the dispute.

Article 10.

If a Contracting Party grants to an investor of the other Contracting Party, in accordance with its laws and regulations or international agreements of which the Contracting Parties are members, more favourable treatment in respect of investment or investment-related activities than that provided for in this Agreement, it shall apply more favourably.

Article 11.

1. Representatives of the Parties may meet as necessary for the following purposes:

(i) Study the application of this Agreement.

(ii) Exchange of information on the legal aspects of investment and the possibility of making investments.

(iii) Settlement of disputes arising out of investments.

(iv) Study of other matters relating to investment.

(e) Study proposals for possible amendments and additions to this Agreement.

2. If one of the Parties proposes to hold consultations on any of the matters listed in paragraph 1 of this article, the other Party shall respond promptly. Consultations may be held alternately in Beijing and Almaty.

Article 12.

This Agreement shall enter into force for a period of five years on the thirtieth day following the date on which the Contracting Parties have notified each other in writing of the completion of their respective domestic legal proceedings.

This Agreement shall remain in force unless terminated by one of the Contracting Parties by written notice to the other Contracting Party at least one year prior to the expiry of the period of validity provided for in paragraph 1 of this article.

At any time after the expiry of the first five-year period of this Agreement, one of the Contracting Parties may terminate this Agreement by written notice to the other Contracting Party. Such notice shall take effect twelve months after the date of its receipt by the other Contracting Party.

Investments made prior to the date of termination of this Agreement under Articles 1 to 12 shall remain in force for a period of five years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives of their respective Governments, duly authorized thereto, have signed this Agreement.

IN WITNESS WHEREOF, the respective Governments have duly authorized their representatives to sign the present Agreement. Done in two copies, each in the Chinese, Kazakh and Russian languages. All texts are equally authentic. In the event of any difference in interpretation of the Agreement, the Russian text shall prevail.

For the Government of the People's Republic of China

(Signed)

Delegate

Tani Yong

For the Government of the Republic of Kazakhstan

(Signed)

Delegate

Kang Tadzhonov